

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
vs.) No. 4:08 CR 644 ERW
)
Cheryl Johnson)
)
Defendant.)

DEFENDANT'S SENTENCING MEMORANDUM

COMES now defendant, by and through his attorney, Nanci McCarthy, and submits the following memorandum as an aid to the Court for sentencing.

Ms. Johnson pled guilty on February 20th, 2009 to one count of fraudulent use of an unauthorized access device. Through her plea, Mrs. Johnson has accepted responsibility for her criminal conduct. The advisory guideline range recommended in the Presentence Investigation Report (hereinafter "PSR") is 0 to 6 months. The advisory guideline range is only one factor to consider. Mrs. Johnson provides the following information to assist the Court in considering all the factors under § 3553(a). Given the advisory range and the characteristics of Ms. Johnson, she requests that the Court consider a sentence of probation in this matter.

Cheryl Johnson is 42 years old. Mrs. Johnson was born in East St. Louis, Illinois in 1966 and had a horrific childhood. As an adult, the social security

administration has determined Mrs. Johnson is mentally retarded. Additionally, she has struggled with mental health and substance abuse problems throughout her life. Fortunately, Mrs. Johnson has struggled to overcome her problems. She can boast nine years of sobriety and continued efforts to deal with her mental health issues. However, her background is worth reviewing when determining the appropriate sentence in her case.

Cheryl's life was chaotic. Her father was murdered when she was seven years old. Cheryl was then raised by her mother and her step-father. Cheryl has blocked out most of her childhood and has difficulty recalling details. However, she does remember there was excessive drinking and fighting in the home. Cheryl has flashbacks to being molested by her step father but she can't provide any details about the age or frequency of those assaults. She also recalls her older sisters running away from home whenever possible.

Division of family services was involved with the family throughout her childhood. Her younger sister was removed from the home and her mother was sent to prison for six months for "starving her little sister." Cheryl's sister suffers from permanent disabilities based on malnutrition - she is still in a wheelchair today. Another of Cheryl's sisters suffers from schizophrenia. Two other sisters and her brother have been in and out of prison.

Additionally, both of her older sisters had babies before they were fifteen. Cheryl was left home to raise the babies and felt as though she was their

mother. Eventually, DFS removed Cheryl's nieces' from the home too. To this day it is painful for Cheryl to recall the DFS workers taking her nieces from her arms. Cheryl was only 12 when the first baby was removed and 13 when the second baby was removed.

When in school, Mrs. Johnson was in special education. She could not read or write. She left Rock Junior High School in the sixth grade after becoming pregnant. She became pregnant after she was raped by a 25 year old neighbor for whom she babysat. The man was never prosecuted for his crime, and her mother told her that she could not help her take care of the baby because she had an infant of her own to raise. Thus, Cheryl quit school to care for her child full time. To this day she has limited literacy skills. As she puts it, she "can read and write but not big words."

Following her pregnancy and her mother's imprisonment, Cheryl went to live with her grandmother and her uncle. This home was no better than her first. Her uncle regularly "shot up" heroin in front of Cheryl. If she told her grandmother, her uncle beat her severely. Her grandmother beat Cheryl and her siblings as well. She would force the children to strip naked and beat them with extension cords until they bled. She mocked Cheryl for having a child as a result of a rape and called the baby a "half breed" (the rapist was hispanic). Cheryl hid upstairs with the child most of the day as she was ashamed by her own baby.

Not surprisingly, Cheryl began to drink by age 11 and use crack cocaine by age 22. Her substance abuse grew and Cheryl admits drugs became her priority. As a result of her addictions, she was homeless, jobless, and ate of trash cans. She lost custody of her three children and degraded herself to get drugs. Between 1988 and 1997 she was beaten and abused, but her only focus was to get drugs. She was also convicted of several misdemeanor offenses during this time, however, she has not had any convictions since 1997.

Finally, in 2000 Cheryl checked herself into a three month inpatient treatment program in Collinsville, Illinois. Upon her release she was destitute and homeless, but she was sober. Despite living on the streets until she could find work, she attended daily outpatient treatment in Belleville. To this day she has not gone back to drugs. She has more than nine years sober. She attends Narcotics Anonymous Meetings daily, seven days per week. In addition to participating in NA she serves as a sponsor for 23 other women. Some days she attends as many as four meetings for her own needs and to assist those that she sponsors. All urinalysis testing while on supervision have been negative and many letters have been supplied to the Court verifying her sobriety.

Through her participation in NA, Mrs. Johnson met her husband Johnny Edwards. They married in 2003 after dating for two years and have remained married for six years. Mr. Edwards is a drug abuse counselor and is supportive of Cheryl's long term recovery. The couple is active in the community helping

those who are in recovery.

After she gained sobriety, Mrs. Johnson was able to address her mental health needs. She has suffered from anxiety and depression throughout her life. She has reported multiple suicide attempts since age 21. In 1999 law enforcement stopped her from attempting suicide by jumping in the Mississippi River. In 2001 she was treated by Comprehensive Behavioral Health Center in St. Clair County. She was diagnosed as having below average intellectual functioning, social adjustment and daily living skills. Additionally, the initial evaluation recommended a full psychiatric evaluation. In 2002 she was diagnosed with depression, anxiety and a sleep disorder. Throughout the years, medication was prescribed for these conditions including zoloft, ambien and thorazine. While on pretrial supervision for this case further mental health counseling was ordered and new medication prescribed.

Another result of her sobriety was that Cheryl repaired her relationship with her mother. Her mother had finally left her step father and quit drinking. Unfortunately, her mother died of cancer in 2002. Cheryl and her (now) husband cared for her mother through her bone cancer. Cheryl took her mother's death very hard but managed to maintain her sobriety throughout that difficult time. She managed to save enough money during her mother's illness to pay for a small funeral service for her mother.

Additionally, despite her mental health problems and her low intellectual

functioning, Cheryl maintained steady employment with Tower Village. She maintained employment with this company from 2002 until 2009. She was terminated in 2009 as a result of this offense. However, she is seeking reinstatement and may be eligible depending upon the sentence she receives in this case.

Given Cheryl's upbringing, it is remarkable the progress she has made in her life. She is struggling to make a better life for herself and her family. She has regained the trust of her two older children and is active in their lives. As reflected in the PSR, her oldest daughter confirms that her mother is a good person who has had a very difficult life. Cheryl's son, Shawn, was living with Cheryl and her husband until recently. Shawn recently married and has a new baby. Cheryl and Johnny allowed Shawn to live with them until he saved enough money to get his own apartment. Cheryl's daughter in law has written on her behalf explaining how Cheryl's kindness has helped them survive with the new baby.

Cheryl accepts full responsibility for her conduct in this offense. She ordered items from the Swiss Colony catalog under someone else's account without their permission. To her credit, after the items arrived, she contacted the company and attempted to change the account to her name. She provided her own identifying information to the company so that the items could be billed to her properly. This does not in any way diminish her responsibility for this

offense. However, her actions show that she is attempting to rectify and take responsibility for her mistake.

Wherefore, defendant requests that the court consider the history and characteristics of the defendant, including her acceptance of responsibility, and the nature and circumstances of this case when determining the appropriate sentence in this matter. Specifically, the defendant requests that the Court impose a period of probation with whatever conditions the Court deems appropriate in this matter.

The defendant suggests that such a sentence would meet all the sentencing objectives before the Court.

Respectfully submitted,
/s/Nanci H. McCarthy
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on May 4th, 2009, the foregoing was served by hand delivery upon AUSA Tracy Berry and USPO Ryan Wilke at 11 South Tenth Street, St. Louis, MO.

I

/s/Nanci H. McCarthy
NANCI H. MCCARTHY

Assistant Federal Public Defender